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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Confirmation No. 7223**
Helmut FITZ : Attorney Docket No. 2004_0577A
Serial No. 10/829,240 : Group Art Unit 3637
Filed April 22, 2004 : Examiner Philip Gabler
EXTENSION GUIDE FITTING FOR DRAWERS

THE COMMISSIONER IS AUTHORIZED
TO CHARGE ANY DEFICIENCY IN THE
FEES FOR THIS PAPER TO DEPOSIT
ACCOUNT NO. 23-0976

REPLY TO THE NOTICE OF NON-COMPLIANT APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Please find attached a slightly revised Appeal Brief in response to the Notice of Non-Compliant Appeal Brief dated November 15, 2006. The attached Appeal Brief is identical to the Appeal Brief submitted on October 10, 2006, with the only exception being that the Summary of the Claimed Subject Matter section now includes the independent claim numbers.

Respectfully submitted,

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November 22, 2006



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

application of

: **Confirmation No. 7223**

Helmut FITZ

: Attorney Docket No. 2004_0577A

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EXTENSION GUIDE FITTING FOR DRAWERS

THE COMMISSIONER IS AUTHORIZED
TO CHARGE ANY DEFICIENCY IN THE
FEES FOR THIS PAPER TO DEPOSIT
ACCOUNT NO. 23-0975

APPEAL BRIEF FILED UNDER 37 CFR § 41.37

Assistant Commissioner for Patents,

Sir:

The following is the Appellant's Brief, submitted in accordance with the provisions of 37 CFR 41.37.

Real Party in Interest

The real party in interest is Julius Blum Gesellschaft mbH, the assignee of the present application.

Related Appeals and Interferences

There are no known related appeals, interferences, or judicial proceedings.

Status of Claims

Claims 10-18 were submitted in an Amendment filed April 25, 2006, and those claims are currently pending. In a final Office Action dated June 20, 2006, the Examiner rejected

pending claims 10-18 in view of the prior art. A complete copy of all of the claims involved in this appeal is provided in the attached Claims Appendix.

Status of Amendments

No amendments subsequent to the final Office Action of June 20, 2006 have been submitted.

Summary of the Claimed Subject Matter

A description of the subject matter recited in the rejected claims will be provided below with reference to the written description and drawings of this Application. In this regard, the cited portions of the written description refer to the substitute specification filed April 25, 2006.

The present invention specifically relates to an extension guide fitting that allows a drawer to be fully extended. In particular, as recited in both independent claims 10 and 18, the extension guide fitting includes an extension rail 4 which is to be attached to a drawer 10, a carrier rail 2 which is to be attached to a furniture body, and a middle rail 3 which is arranged to run between the extension rail 4 and the carrier rail 2 (see page 3, lines 6-8; and Figures 2 and 3). Carriages 5 each having running rollers mounted therein are provided for transmitting a load between the extension rail 4, the middle rail 3, and the carrier rail 2 (see page 3, lines 9-11; and Figure 2).

The basic components discussed above are not uncommon in extension guide fittings. However, conventional extension guide fittings with the basic components described above have stability problems. In particular, the carriages with the running rollers are generally located in the center of the extension guide fitting (see page 1, lines 10-12 and Figure 2). Therefore, when the drawer is located in a closed position, the carriages located generally in the center of the guide system cause the support for the drawer to be relatively unstable (see page 1, lines 17-20). Due to various reasons, the type of conventional extension guide fitting with carriages is particularly unstable at the *front* of the extension guide fitting (see page 1, lines 21-28).

In view of the above, it is desirable to provide full-extension guide fittings which generally include an extension rail, a carrier rail, a middle rail, and carriages for transmitting a load between the rails with some type of support system at the *front portion* of the carrier rail so as to allow for smooth and stable movement of the drawer (see page 1, line 28 through page 2, line 2). In this regard, some conventional guide fittings, such as that disclosed in AT 004518 (the “Vorarlberg reference” applied by the Examiner in the final Office Action), propose to address this problem by providing a single stationary support roller at the front end of each carrier rail. However, this arrangement does not provide sufficient support, especially with respect to heavy drawers (see page 2, lines 3-6). In this regard, support rollers are generally formed of a relatively lightweight material which is unfortunately subject to deformation if excessive pressure is applied thereto. Therefore, if a drawer is heavily loaded or has a heavy front plate, the resulting large amount of pressure applied to a single support roller when the drawer remains in the closed position will often cause the support roller to become deformed, causing unstable operation.

In view of the above drawbacks, the extension guide fitting as recited in both independent claims 10 and 18 further includes a rocker member 14 mounted at a *front portion* of the carrier rail 2, and stationary support rollers 8 mounted in the rocker member 14 (see page 3, lines 15-16 and lines 27-28; and Figures 7 and 8). The rocker member 14 and the stationary support rollers 8 are arranged so that the extension rail 4 runs on the stationary support rollers 8 and *is supported by the stationary support rollers 8 at least when the extension rail is in a closed position* (see page 3, lines 15-16; page 2, lines 28-29; and Figure 4). The multiple stationary support rollers 8 absorb the forces applied at the front portion of the carrier rail so as to eliminate damage to the individual rollers and provide stability to the extension guide fitting, and the rocker member in which the support rollers are mounted provides the flexibility (i.e., rocking/pivoting ability) for the support rollers so as to prevent jamming of the drawer and to allow for a smoother operation. As a result of this arrangement, a larger load (i.e., a heavier drawer) can be smoothly and stably carried by the extension guide fitting (see page 2, lines 11-16).

Grounds of Rejection to be Reviewed on Appeal

Claims 10-18 stand rejected as being unpatentable under 35 USC 103(a) over AT 004518 (the "Vorarlberg reference") in view of U.S. Patent No. 5,895,102 (the "Fleisch reference"). Although the Examiner applied the Fleisch reference in these prior art rejections, it is noted that the Fleisch reference has not yet been listed on a Form 1449 or a Form 892 so as to be made formally of record.

Argument

In the final Office Action of June 20, 2006, the Examiner rejected pending claims 10-18, including independent claims 10 and 18, as being unpatentable over the Vorarlberg reference in view of the Fleisch reference. In particular, the Examiner acknowledged that the Vorarlberg reference merely teaches a *single* stationary support roller at a front portion of a carrier rail (as noted above), but does not teach or suggest the rocker member or the multiple stationary support rollers as recited in independent claims 10 and 18. Nonetheless, the Examiner asserted that the Fleisch reference provides a teaching that would motivate one of ordinary skill in the art to modify the Vorarlberg reference so as to obtain the invention recited in pending claims 10-18. However, the Applicant respectfully disagrees. For the reasons discussed below, it is respectfully submitted that the combination of the Vorarlberg reference and the Fleisch reference do not teach or even suggest the extension guide fitting as recited in independent claims 10 or 18.

The Applied Prior Art Does Not Teach or Suggest All of the Elements Recited in Independent Claims 10 and 18

Independent claims 10 and 18 each recite:

- (1) that the extension guide fitting comprises a rocker member mounted at a *front portion* of a *carrier* rail; and
- (2) that stationary support rollers are mounted in the rocker member, and that the extension rail is *supported by the stationary support rollers at least when the extension rail is in*

a closed position. As will be discussed below, it is submitted that the combination of prior art does not teach either of these features.

On page 2 of the final Office Action, the Examiner asserted that the “use of rocker members in drawer guides is known in the art, however, as shown by Fleisch, who (Figures 2-4) discloses a guide fitting for drawers including a rocker member (24, including 10, etc) with multiple support rollers (11, 18, 25).” Thus, the Examiner asserted that it would have been obvious to one of ordinary skill in the art to modify the Vorarlberg reference as suggested by the Fleisch reference so as to obtain the invention recited in independent claims 10 and 18.

The Fleisch reference teaches a drawer slide which includes a guide rail 1 and a drawer rail 8 (see column 4, lines 46-52 and Figure 6). In other words, the extension guide fitting of the Fleisch reference includes only two rails. Although the Examiner identified the “rocker member” of the Fleisch reference as the component identified by reference number 24, including 10, reference number 24 identifies a guiding member 24 of a support lever 13 (see column 5, lines 40-41), and reference number 10 designates an end piece at a *rear end portion* of the drawer rail 8 (see column 4, lines 54-55). As further explained in this reference, the end piece 10 carries a track roller 11, and the supporting lever 13 is pivoted on the end piece 10 about a horizontal axis 14 (see column 4, lines 55-58). As will be clear from the discussion below, the end piece 10 which carries the track roller 11 does not pivot or rock, but instead serves as a base member for holding the supporting lever 13 and the track roller 11. In particular, the supporting lever 13 pivots on the end piece 10 about the axis 14. Therefore, it is the Applicant’s understanding that the Examiner is taking the position that the supporting lever 13 of the Fleisch reference corresponds to the rocker member of the present invention.

As noted above, both the end piece 10 and the supporting lever 13, which is pivotally connected to the end piece 10, are located at the *rear end portion* of the drawer rail 8. Therefore, it is respectfully submitted that the Fleisch reference does not disclose or even suggest a rocker member mounted at a *front portion* of a *carrier* rail, as recited in independent claims 10 and 18.

Furthermore, the extension rail (i.e., drawer rail 8) of the Fleisch reference is not supported by the stationary support rollers of the “rocker member” (i.e., supporting lever 13)

when the extension rail is in a closed position (i.e., when the drawer is closed). In this regard, column 5, lines 31-35 explain that the supporting lever 13 is swung up into the rest position shown in Figure 1 when the drawer is pushed in (i.e., the drawer is in the closed position). Furthermore, the supporting lever 13 is swung down into the working position shown in Figure 3 when the drawer is drawn out (i.e., opened) as noted previously, the supporting level 13 is pivoted on the horizontal axis 14 of the end piece 10. As explained in column 5, lines 2-5 of the Fleisch reference, the drawer rail 8 is supported on the front track roller 7 and the rear track roller 11 of the drawer rail when the supporting lever 13 is in the “resting” position, as illustrated in Figure 1. In other words, when the drawer rail (i.e., extension rail) is located in the *closed position* (i.e., the upper resting position) as illustrated in Figure 1, the drawer rail (i.e., extension rail) is supported by only the front roller 7 and the rear track roller 11, but is not supported by rollers 18, 24 of the supporting lever 13. However, as explained in column 5, lines 5-7 of the Fleisch reference, when the supporting lever 13 is located in the working position (i.e., the open position of the drawer and the drawer rail 8) as illustrated in Figure 3, the supporting roller 18 of the support lever 13 supports the drawer rail (i.e., extension rail 8). Thus, it is clear that the Fleisch reference also does not disclose or even suggest a rocker member and stationary support rollers mounted in the rocker member and arranged so that an extension rail is *supported by the stationary support rollers at least when the extension rail is in a closed position*.

In the final Office Action, the Examiner acknowledged that the Vorarlberg reference does not teach or suggest a rocker member or multiple stationary support rollers as recited in new independent claims 10 and 18. Furthermore, as explained above, the Fleisch reference also does not teach or suggest these features. Consequently, it is submitted that the combination of the Vorarlberg reference and the Fleisch reference do not teach or suggest all of the elements recited in new independent claims 10 and 18.

The Applied Prior Art Can Not Be Combined as Suggested by the Examiner

As noted above, it appears that the Examiner is taking the position that the supporting lever 13 of the Fleisch reference corresponds to the rocker member recited in independent claims

10 and 18. However, as noted above, the Fleisch reference clearly teaches that the supporting lever 13 is located at the *rear end portion* of the drawer rail 8. Therefore, although the Examiner did not explicitly state so in the Office Action, it *appears* that the Examiner is taking the position that it would be an obvious modification to move the supporting lever 13 of the Fleisch reference to the front portion of the carrier rail. However, if this understanding is correct, it is first noted that the Examiner has not provided any explanation as to why one ordinary skill in the art would be motivated to make such a modification. Moreover, because such a modification would clearly change the principle of operation of the Fleisch reference, it is submitted that this proposed modification can not be made.

It is well established that if a proposed modification of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the reference are not sufficient to render the claims *prima facie* obvious. See *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). The object of the Fleisch reference is to provide a drawer slide which can allow a drawer to be fully extended without having to provide an intermediate rail (see column 2, lines 16-22 and column 1, lines 21-23). In order to achieve this result, a supporting lever 13 is attached to an end piece 10 at a *rear end portion* of a drawer rail 8. As the drawer is pulled out, the supporting lever 13 located at the rear portion of the drawer rail is extended as illustrated in Figures 1-3. When the drawer 5 is pulled out so that the center of gravity of the drawer is located past the front track roller 7 of the guide rail 1, the drawer 5 is subjected to a tilting movement due to gravity. As a result, the track roller 11 is lifted off of the guide rail 1, but the tilting moving is halted as the supporting roller 18 of the extended supporting lever 18 engages the web 19 of the guide rail (see column 5, lines 7-18). Thus, in order to prevent the drawer from falling out of the piece of furniture when the drawer is fully extended using the two-rail drawer slide, the supporting lever 13 *must* be located at the rear end portion of the drawer. If the supporting lever 13 is instead moved to the front portion of one of rails, the entire principle of operation of the Fleisch reference would change (in fact, the drawer would fall out or the drawer could not be fully opened, so that the object of the invention would not be achieved). Therefore, to the extent that the Examiner *is* proposing a modification of the Fleisch

reference by moving the supporting lever 13 to the front portion of a rail, it is submitted that this proposed modification of the Fleisch reference would severely modify the principle of operation of the Fleisch reference. Accordingly, it is submitted that this modification and the combination of the Fleisch reference and the Vorarlberg reference cannot be made.

Conclusion

As noted above, the combination of the Vorarlberg reference and the Fleisch reference does not disclose or even suggest all of the features recited in independent claims 10 or 18, and the Vorarlberg reference and the Fleisch reference cannot be combined as apparently suggested by the Examiner. Thus, it is respectfully submitted that independent claims 10 and 18 are clearly patentable over the prior art of record, and the Board of Appeals is respectfully requested to reverse the Examiner's prior art rejections set forth in the final Office Action of June 20, 2006.

Respectfully submitted,

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November 22, 2006

CLAIMS APPENDIX - Claims on Appeal (Appeal - Application Serial No. 10/829,240)

10. (New) An extension guide fitting for a drawer, comprising:
an extension rail to be attached to a drawer;
a carrier rail to be attached to a furniture body;
a middle rail arranged to run between said extension rail and said carrier rail;
carriages each having running rollers mounted therein for transmitting a load between
said extension rail, said middle rail, and said carrier rail;
a rocker member mounted at a front portion of said carrier rail; and
stationary support rollers mounted in said rocker member, said rocker member and said
stationary support rollers being arranged so that said extension rail runs on said stationary
support rollers and is supported by said stationary support rollers at least when said extension rail
is in a closed position.

11. (New) The extension guide fitting of claim 10, wherein said stationary support
rollers are arranged laterally adjacent to said middle rail.

12. (New) The extension guide fitting of claim 10, wherein said stationary support
rollers are arranged so that a first one of said stationary support rollers is located behind a second
one of said stationary support rollers with respect to a direction of displacement of the drawer.

13. (New) The extension guide fitting of claim 10, wherein said rocker member includes
common plates between which said stationary support rollers are mounted.

14. (New) The extension guide fitting of claim 10, wherein said stationary support
rollers comprise three stationary support rollers mounted in said rocker member and arranged so
that a first one of said three stationary support rollers is located behind a second one of said three
stationary support rollers with respect to a direction of displacement of the drawer, and so that
said second one of said three stationary support rollers is located behind a third one of said three

stationary support rollers with respect to the direction of displacement of the drawer.

15. (New) The extension guide fitting of claim 14, wherein said first support roller and said third support roller are mounted on support plates of said rocker member, and said second support roller is mounted at a central location on a shaft of said rocker member.

16. (New) The extension guide fitting of claim 10, wherein said extension rail has a running limb for contacting and being supported by said stationary support rollers mounted in said rocker member.

17. (New) The extension guide fitting of claim 16, wherein said running limb extends from a side limb of said extension rail so as to project toward an inside of said extension rail.

18. (New) A furniture piece comprising:

a drawer;

a furniture body in which said drawer is fitted;

a first extension guide fitting including:

a first extension rail attached to a first side of said drawer;

a first carrier rail attached to a first side of said furniture body;

a first middle rail arranged to run between said first extension rail and said first carrier rail;

first carriages each having running rollers mounted therein for transmitting a load between said first extension rail, said first middle rail, and said first carrier rail;

a first rocker member mounted at a front portion of said first carrier rail; and

first stationary support rollers mounted in said first rocker member, said first rocker member and said first stationary support rollers being arranged so that said first extension rail runs on said first stationary support rollers and is supported by said first stationary support rollers at least when said drawer is in a closed position; and

a second extension guide fitting including:

a second extension rail attached to a second side of said drawer;

a second carrier rail attached to a second side of said furniture body;

a second middle rail arranged to run between said second extension rail and said second carrier rail;

second carriages each having running rollers mounted therein for transmitting a load between said second extension rail, said second middle rail, and said second carrier rail;

a second rocker member mounted at a front portion of said second carrier rail; and

second stationary support rollers mounted in said second rocker member, said second rocker member and said second stationary support rollers being arranged so that said second extension rail runs on said second stationary support rollers and is supported by said second stationary support rollers at least when said drawer is in a closed position.

EVIDENCE APPENDIX (Appeal - Application Serial No. 10/829,240)

No evidence has been submitted and relied upon by the Appellant.

RELATED PROCEEDINGS APPENDIX (Appeal - Application Serial No. 10/829,240)

As noted above, there are no known related appeals, interferences, or judicial proceedings.